

Objection Deadline: November 10, 2011 at 4:00 p.m. (Eastern)
Hearing Date and Time: December 6, 2011 at 10:00 a.m. (Eastern)

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Debtors.

Chapter 11
Case No. 08-13555 (JMP)
(Jointly Administered)

**OBJECTION OF CANADIAN IMPERIAL BANK OF
COMMERCE WITH RESPECT TO DEBTORS' PLAN SUPPLEMENT
AND NOTICE OF PROPOSED ASSUMPTION OF EXECUTORY CONTRACTS**

Canadian Imperial Bank of Commerce ("CIBC"), by and through its undersigned attorneys, files this objection with respect to (i) the Plan Supplement [Docket No. 21254] filed by the Debtors in connection with confirmation of the Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors [ECF No. 19627] (the "Modified Plan"), filed by Lehman Brothers Holdings Inc. and its affiliated Debtors ("Debtors") on August 31, 2011 and (ii) the Notice of Proposed Assumption of Executory Contracts and Unexpired Leases Pursuant to Debtors' Third Amended Joint Chapter 11 Plan Pursuant to Section 1121 of the Bankruptcy Code, dated October 27, 2011 with respect to CIBC as counterparty (the "Notice

of Assumption”), because the Debtors have included contracts relating to certain terminated derivatives in the Plan Supplement. In support of its objection, CIBC states:

1. On August 31, 2011, the Debtors filed the Amended Plan.
2. On October 25, 2011, the Debtors filed a Plan Supplement, which includes as Exhibit 2 a Schedule of Executory Contracts and Unexpired Leases to be Assumed Pursuant to Section 11.1 of the Plan.

The Pyxis Swap

3. The Plan Supplement includes a derivatives contract between Lehman Brothers Special Financing Inc. (“LBSF”) and Pyxis ABS CDO 2007-1 LTD (the “Pyxis Swap”) as a contract which the Debtors intend to assume in connection with confirmation of the Plan.¹ All of LBSF’s obligations under the Pyxis Swap Agreement are guaranteed by LBHI.

4. However, prior to LBSF’s bankruptcy petition, the Trustee of the Pyxis CDO terminated all outstanding Transactions under the Pyxis Swap (the “Pyxis Swap Transactions”).

5. On September 14, 2010, LBSF commenced litigation in this Court in which, among other things, LBSF contests the termination of the Pyxis Swap Transactions. *LBSF v. Bank of America National Association, et al.*, Ad. Pro. No. 10-03547 (JMP) (the “Pyxis Litigation”).

6. Thereafter, on October 20, 2010, the Debtors sought and obtained an order staying the Pyxis Litigation. *Order Staying Avoidance Actions and Granting Certain Related*

¹ CIBC is not aware that the Trustee has been served with notice of a proposed assumption. CIBC reserves all of its rights with respect to any such notice, including with respect to objecting to any cure amount or the conditions for assumption.

Relief Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 7004(a)(1) [ECF No. 12199]. As amended, the Stay Order provides, *inter alia*, that the Pyxis Litigation (among other avoidance actions) is stayed until January 20, 2012.

7. The Debtors have placed the termination of the Pyxis Swap Transactions at issue in the Pyxis Litigation. Moreover, the Debtors stayed any determination of the issue by obtaining a stay of proceedings. They should not now be permitted to evade their burden of proof and the procedural requirements of that adversary proceeding by seeking a summary determination of assumption of the Pyxis Swap Transactions in connection with confirmation of the Plan. *See In re Orion Pictures Corp.*, 4 F.3d 1095, 1098-99 (adversary proceeding issues are not to be decided as part of a motion to assume).

8. If CIBC prevails, and the termination of the Pyxis Swap Transactions is upheld, then the Pyxis Swap is not an executory contract, because there would be no performance remaining due from either party.

The CIBC/LBCC Swap

9. The Plan Supplement also includes a derivatives contract between CIBC and Lehman Brothers Commercial Corp. (the “CIBC/LBCC Swap”). CIBC terminated all outstanding Transactions under the CIBC/LBCC Swap by delivery of a Notice of Termination on September 15, 2008.

10. Debtors delivered to CIBC the Notice of Assumption with respect to the CIBC/LBCC Swap which provides for a cure amount of \$0.

11. Because the Transactions have been terminated, there are no remaining obligations under the CIBC/LBCC Swap. Accordingly, the CIBC/LBCC Swap is no longer executory and cannot be assumed. *See In re Sanshoe Worldwide Corp.*, 993 F.2d 300 (2d Cir. 1993); *In re 611 Sixth Avenue Corp.*, 191 B.R. 295, 301 (Bankr. S.D.N.Y. 1996); *Moody v. Amoco Oil Co.*, 734 F.2d 1200 (7th Cir. 1984).

12. CIBC also objects to the cure amount set for in the Notice of Assumption and reserves all of its rights under section 365 of the Bankruptcy Code to a determination of the amount of any cure claim payable by LBCC should the Court determine that the CIBC/LBCC Swap is assumable.

Reservation of Rights

13. To the extent the Court should determine that either the Pyxis Swap is assumable by LBSF or that the CIBC/LBCC Swap is assumable by LBCC, CIBC reserves the right to seek full cure and compensation pursuant to section 365 of the Bankruptcy Code.

WHEREFORE, CIBC respectfully requests that the Court enter an Order requiring the deletion of the Pyxis Swap and the CIBC/LBCC Swap from the Plan Supplement and grant such other relief as is appropriate and just.

Dated: New York, New York
November 8, 2011

Respectfully submitted,

/s/ Brian Trust

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